

CRIMES AND PUNISHMENT

21-3106. Time limitations. (1) A prosecution for murder may be commenced at any time.

(2) Except as provided by subsections (7) and (9), a prosecution for any of the following crimes must be commenced within five years after its commission if the victim is less than 16 years of age: (a) Indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (b) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (c) enticement of a child as defined in K.S.A. 21-3509 and amendments thereto; (d) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (e) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (f) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; or (g) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto.

(3) Except as provided in subsection (9), a prosecution for any crime must be commenced within 10 years after its commission if the victim is the Kansas public employees retirement system.

(4) Except as provided by subsections (7) and (9), a prosecution for rape, as defined in K.S.A. 21-3502 and amendments thereto, or aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto, must be commenced within five years after its commission.

(5) Except as provided in subsection (9), a prosecution for any crime found in the Kansas medicaid fraud control act must be commenced within five years after its commission.

(6) Except as provided by subsection (9), a prosecution for the crime of arson, as defined in K.S.A. 21-3718 and amendments thereto, or aggravated arson, as defined in K.S.A. 21-3719 and amendments thereto, must be commenced within five years after its commission.

(7) (a) Except as provided in subsection (9), a prosecution for any offense provided in subsection (2) or a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, must be commenced within the limitation of time provided by the law pertaining to such offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

(b) For purposes of this section, "DNA" means deoxyribonucleic acid.

(8) Except as provided by subsection (9), a prosecution for any crime not governed by subsections (1), (2), (3), (4), (5), (6) and (7) must be commenced within two years after it is committed.

(9) The period within which a prosecution must be commenced shall not include any period in which:

- (a) The accused is absent from the state;
- (b) the accused is concealed within the state so that process cannot be served upon the accused;
- (c) the fact of the crime is concealed;

(d) a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;

(e) an administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any of the provisions of article 41 of chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated which may be discovered as a result thereof regardless of who obtains the order of restraint; or

(f) whether or not the fact of the crime is concealed by the active act or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present: (i) The victim was a child under 15 years of age at the time of the crime; (ii) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime; (iii) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused; and (iv) there is substantially competent expert testimony indicating the victim psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in this section later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime. "Parent or other legal authority" shall include but not be limited to natural and stepparents, grandparents, aunts, uncles or siblings.

(10) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(11) A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

History: L. 1969, ch. 180, § 21-3106; L. 1986, ch. 118, § 1; L. 1990, ch. 306, § 20; L. 1992, ch. 321, § 20; L. 1993, ch. 253, § 13; L. 1994, ch. 296, § 1; L. 1996, ch. 267, § 13; L. 1998, ch. 52, § 2; L. 1998, ch. 185, § 4; L. 2001, ch. 208, § 3; July 1.

21-3302. Conspiracy. (a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is

alleged and proved to have been committed by such person or by a co-conspirator.

(b) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.

(c) Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2. Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be level 10.

(d) Conspiracy to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(e) A conspiracy to commit a misdemeanor is a class C misdemeanor.

History: L. 1969, ch. 180, § 21-3302; L. 1992, ch. 239, § 35; L. 1993, ch. 291, § 278; July 1.

21-3416. Unlawful interference with a firefighter.

Unlawful interference with a firefighter is knowingly and intentionally interfering with, molesting or assaulting, as defined in K.S.A. 21-3408 and amendments thereto, any firefighter while engaged in the performance of such firefighter's duties, or knowingly and intentionally obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire.

Unlawful interference with a firefighter is a class B person misdemeanor.

History: L. 1969, ch. 180, § 21-3416; L. 1970, ch. 124, § 2; L. 1992, ch. 239, § 55; L. 1993, ch. 291, § 31; July 1.

21-3718. Arson. (a) Arson is: (1) Knowingly, by means of fire or explosive:

(A) Damaging any building or property which is a dwelling in which another person has any interest without the consent of such other person;

(B) damaging any building or property which is a dwelling with intent to injure or defraud an insurer or lienholder;

(C) damaging any building or property which is not a dwelling in which another person has any interest without the consent of such other person; or

(D) damaging any building or property which is not a dwelling with intent to injure or defraud an insurer or lienholder;

(2) accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture a controlled substance in violation of K.S.A. 65-4159, and amendments thereto, damaging any building or property which is a dwelling; or

(3) accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture a controlled substance in violation of K.S.A. 65-4159, and amendments thereto, damaging any building or property which is not a dwelling.

(b) (1) Arson, as described in subsection (a)(1)(A) or (a)(1)(B), is a severity level 6, person felony.

(2) Arson, as described in subsection (a)(1)(C), (a)(1)(D) or (a)(3), is a severity level 7, nonperson felony.

(3) Arson, as described in subsection (a)(2), is a severity level 7, person felony.

History: L. 1969, ch. 180, § 21-3718; L. 1992, ch. 239, § 117; L. 1993, ch. 291, § 76; L. 1994, ch. 291, § 29; L. 2000, ch. 181, § 6; L. 2002, ch. 155, § 1; July 1.

21-3719. Aggravated arson. (a) Aggravated arson is arson, as defined in K.S.A. 21-3718 and amendments thereto, and committed upon a building or property in which there is a human being.

(b) (1) Aggravated arson resulting in a substantial risk of bodily harm is a severity level 3, person felony.

(2) Aggravated arson resulting in no substantial risk of bodily harm is a severity level 6, person felony.

History: L. 1969, ch. 180, § 21-3719; L. 1992, ch. 239, § 118; L. 1993, ch. 291, § 77; L. 1994, ch. 291, § 30; July 1.

21-3720. Criminal damage to property. (a) Criminal damage to property is by means other than by fire or explosive:

(1) Intentionally injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property in which another has an interest without the consent of such other person; or

(2) injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.

(b) (1) Criminal damage to property is a severity level 7, nonperson felony if the property is damaged to the extent of \$25,000 or more.

(2) Criminal damage to property is a severity level 9, nonperson felony if the property is damaged to the extent of at least \$500 but less than \$25,000.

(3) Criminal damage to property is a class B nonperson misdemeanor if the property damaged is of the value of less than \$500 or is of the value of \$500 or more and is damaged to the extent of less than \$500.

History: L. 1969, ch. 180, § 21-3720; L. 1978, ch. 120, § 31; L. 1984, ch. 119, § 7; L. 1989, ch. 92, § 33; L. 1992, ch. 298, § 78; L. 1993, ch. 291, § 78; L. 1994, ch. 291, § 31; July 1.

21-3731. Criminal use of explosives. (a) Criminal use of explosives is the possession, manufacture or transportation of commercial explosives; chemical compounds that form explosives; incendiary or explosive material, liquid or solid; detonators; blasting caps; military explosive fuse assemblies; squibs; electric match or functional improvised fuse assemblies; or any completed explosive devices com-

monly known as pipe bombs or molotov cocktails. For purposes of this section, explosives shall not include class "c" fireworks, legally obtained and transferred commercial explosives by licensed individuals and ammunition and commercially available loading powders and products used as ammunition.

(b) (1) Criminal use of explosives as defined in subsection (a) is a severity level 8, person felony.

(2) Criminal use of explosives as defined in subsection (a) if: (A) The possession, manufacture or transportation is intended to be used to commit a crime or is delivered to another with knowledge that such other intends to use such substance to commit a crime; (B) a public safety officer is placed at risk to defuse such explosive; or (C) the explosive is introduced into a building in which there is another human being, is a severity level 6, person felony.

History: L. 1969, ch. 180, § 21-3731; L. 1992, ch. 239, § 125; L. 1993, ch. 291, § 84; L. 1994, ch. 348, § 14; L. 1999, ch. 164, § 10; July 1.

21-4110. Giving a false alarm. (a) Giving a false alarm is: (1) transmitting in any manner to the fire department of any city, township or other municipality a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists; or

(2) making a call in any manner for emergency service assistance including police, fire, medical or other emergency service provided under K.S.A. 12-5301 *et seq.*, and amendments thereto, knowing at the time of such call that there is no reasonable ground for believing such assistance is needed.

(b) Giving a false alarm is a class A nonperson misdemeanor.

History: L. 1969, ch. 180, § 21-4110; L. 1984, ch. 122, § 1; L. 1992, ch. 239, § 194; L. 1993, ch. 291, § 143; L. 1997, ch. 181, § 2; May 29.

21-4201. Criminal use of weapons. (a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(2) carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slung [sling] shot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(4) carrying any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business;

(5) setting a spring gun;

(6) possessing any device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm;

(7) selling, manufacturing, purchasing, possessing or carrying a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger; or

(8) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight.

(b) Subsections (a)(1), (2), (3), (4) and (7) shall not apply to or affect any of the following:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) manufacture of, transportation to, or sale of weapons to a person authorized under subsections (b)(1), (2) and (3) to possess such weapons.

(c) Subsection (a)(4) shall not apply to or affect the following:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) licensed hunters or fishermen, while engaged in hunting or fishing;

(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto; or

(6) special deputy sheriffs described in K.S.A. 2002 Supp. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.

(d) Subsections (a)(1), (6) and (7) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 *et seq.* in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) Subsection (a)(8) shall not apply to a governmental laboratory or solid plastic bullets.

(f) Subsection (a)(6) shall not apply to a law enforcement officer who is:

(1) Assigned by the head of such officer's law enforcement agency to a tactical unit which receives specialized, regular training;

(2) designated by the head of such officer's law enforcement agency to possess devices described in subsection (a)(6); and

(3) in possession of commercially manufactured devices which are: (A) Owned by the law enforcement agency; (B) in such officer's possession only during specific operations; and (C) approved by the bureau of alcohol, tobacco and firearms of the United States department of justice.

(g) It shall be a defense that the defendant is within an exemption.

(h) Violation of subsections (a)(1) through (a)(5) is a class A nonperson misdemeanor. Violation of subsection (a)(6), (a)(7) or (a)(8) is a severity level 9, nonperson felony.

(i) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

History: L. 1969, ch. 180, § 21-4201; L. 1978, ch. 365, § 1; L. 1981, ch. 145, § 1; L. 1982, ch. 135, § 2; L. 1982, ch. 136, § 1; L. 1986, ch. 126, § 1; L. 1992, ch. 298, § 67; L. 1993, ch. 291, § 146; L. 1996, ch. 149, § 4; L. 1999, ch. 164, § 12; L. 2002, ch. 123, § 3; July 1.

AGO: 98-27, 97-17, 96-69, 94-118, 94-18, 84-104, 82-271, 82-238, 82-62, 79-36

21-4207. Failure to register sale of explosives. (a) Failure to register sale of explosives is the omission, by the seller of any explosive or detonating substance, to keep a register of every sale or other disposition of such explosives made by the seller as required by this section.

(b) The register of sales required by this section shall contain the date of the sale or other disposition, the name, address, age and occupation of the person to whom the explosive is sold or delivered, the kind and amount of explosive delivered, the place at which it is to be used and for what purpose it is to be used. Such register and record of sale or other disposition shall be open for inspection by any law enforcement officer, mine inspector or fire marshal of this state for a period of not less than one year after the sale or other disposition.

(c) Failure to register sale of explosives is a class B nonperson misdemeanor.

History: L. 1969, ch. 180, § 21-4207; L. 1992, ch. 239, § 204; L. 1993, ch. 291, § 151; July 1.

21-4209. Criminal disposal of explosives. (a) Criminal disposal of explosives is knowingly selling, giving or otherwise transferring any explosive or detonating substance to:

(1) A person under 21 years of age; or

(2) a person who is both addicted to and an unlawful user of a controlled substance; or

(3) a person who, within the preceding five years, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony.

(b) Criminal disposal of explosives is a severity level 10, person felony.

History: L. 1969, ch. 180, § 21-4209; L. 1992, ch. 298, § 71; L. 1993, ch. 291, § 152; L. 1994, ch. 348, § 15; July 1.

21-4209a. Criminal possession of explosives. (a) Criminal possession of explosives is the knowing possession of any explosive or detonating substance by a person who, within five years preceding such possession, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony.

(b) Criminal possession of explosives is a severity level 7, person felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 1981, ch. 141, § 1; L. 1992, ch. 298, § 72; L. 1993, ch. 291, § 153; L. 1994, ch. 348, § 16; July 1.

21-4209b. "Explosives" defined. As used in K.S.A. 21-4209 and 21-4209a, "explosives" means any chemical compound, mixture or device, of which the primary purpose is to function by explosion, and includes but is not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

History: L. 1981, ch. 141, § 2; July 1.

21-4210. Carrying concealed explosives. Carrying concealed explosives is carrying any explosive or detonating substance on the person in a wholly or partly concealed manner.

Carrying concealed explosives is a class C misdemeanor.

History: L. 1969, ch. 180, § 21-4210; July 1, 1970.

21-4217. Criminal discharge of a firearm. (a) Criminal discharge of a firearm is the discharge of any firearm:

(1) Upon any land or nonnavigable body of water of another, without having obtained permission of the owner or person in possession of such land; or

(2) upon or from any public road, public road right-of-way or railroad right-of-way that adjoins land of another without having first obtained permission of the owner or person in possession of such land.

(b) This section shall not apply to any of the following:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the national guard while in the performance of their official duty;

(4) watchmen, while actually engaged in the performance of the duties of their employment;

(5) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(6) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or

(7) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto.

(c) Criminal discharge of a firearm is a class C misdemeanor.

History: L. 1986, ch. 126, § 2; L. 1992, ch. 298, § 73; July 1, 1993.

21-4318. Inflicting harm, disability or death to a police, search and rescue or arson dog. (a) Inflicting harm, disability or death to a police dog, arson dog or search and rescue dog is knowingly and intentionally, and without lawful cause or justification poisoning, inflicting great bodily harm, permanent disability or death, upon a police dog, arson dog or search and rescue dog.

(b) As used in this section:

(1) "Arson dog" means any dog which is owned, or the service of which is employed, by the state fire mar-

shal or a fire department for the principal purpose of aiding in the detection of liquid accelerants in the investigation of fires.

(2) "Fire department" means a public fire department under the control of the governing body of a city, township, county, fire district or benefit district or a private fire department operated by a nonprofit corporation providing fire protection services for a city, township, county, fire district or benefit district under contract with the governing body of the city, township, county or district.

(3) "Police dog" means any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws or apprehension of offenders.

(4) "Search and rescue dog" means any dog which is owned or the service of which is employed, by a law enforcement or emergency response agency for the purpose of aiding in the location of persons missing in disasters or other times of need.

(c) Inflicting harm, disability or death to a police dog, arson dog or search and rescue dog is a class A non-person misdemeanor.

(d) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 1992, ch. 298, § 82; L. 1993, ch. 291, § 250; L. 1998, ch. 52, § 1; L. 2002, ch. 45, § 1; July 1.